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10/684,266	10/14/2003	Gary Wayne McAfee		1732

7590

07/14/2004

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/684,266

Applicant(s)

MCAFEE, GARY WAYNE

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413).  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:
2. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications, except when the reference is to a prior application of a CPA assigned the same application number, and the current status of the prior application(s).

### *Drawings*

3. The drawings are objected to under 37 CFR 1.84(h)(5) because Figures 5 and 8 show modified forms of construction in the same view. Each modified form should be separately labeled. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing SHOULD NOT be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any

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required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate both the main body of the valve (note line 17 on page 4 and Figs. 2 and 3) and valves (note line 1 on page 5 and Fig. 5). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **20** (note Figs. 6 and 7) and **35** (note Fig. 10). Corrected drawing sheets, or amendment to the specification to add the reference character(s) in the description, are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or

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remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

7. It is pointed out that with regard to paragraph 3 above, if Figs. 5 and 8 are amended to have each modified form separately labeled, the specification and, specifically, the brief description of the drawings section, should be likewise amended to indicate the new labels for Figs. 5 and 8.

### *Specification*

8. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. **Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.

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(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

9. The disclosure is objected to because of the following informalities: (A) on page 1, the title is in bold type and not in upper case; (B) on page 3, line 1, the section heading is not in upper case; (C) on page 4, line 1, the section heading is in bold type and not in upper case; (D) on page 7, line 1, the section heading is in bold type and not in upper case; (E) on page 9, line 1, the section heading is in bold type and not in upper case; and (F) on page 9, the body of the ABSTRACT is oddly positioned on just the left side of the page similar to a column format. Appropriate correction is required.

10. The following informalities in the specification are noted: (A) on page 2, line 1, "SUMMARY" is misspelled; (B) on page 3, at the beginning of each line, the figure number is duplicated; (C) on page 3, at the end of each line, a period is lacking; (D) on page 7, the portion "What is claimed is:" should appear at the top of the page under the section heading "CLAIMS" rather than being repeated with each claim; (E) on page 4, line 12, "two" should read --2--; (F) on page 4, line 21, "four" should read --4-- and "two" should read --2--; (G) on page 5, line 1, "five" should read --5-- and "two" should read --2--; (H) on page 5, line 5, "six" should read --6--; (I) on page 5, line 20, "seven" should read --7--; (J) on page 5, line 9, --paddles-- should be inserted after "fan"; (K) on page 5, line 14, "six" should read --6--; (L) on page 6, line 1, "eight"

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should read --8--; (M) on page 6, line 7, "nine" should read --9--; (N) on page 6, line 20, "eleven" should read --11-- and "addict" should read --attic--; and (O) on pages 7 and 8, the claim numbers should begin on the first line of each claim (note the claim format in the Sowards reference attached hereto). It is suggested that applicant use the Sowards reference as a guide for the proper format. Appropriate correction is required.

11. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claim terminology which lacks such antecedent basis is as follows: (A) "a dry inlet", as called for by claim 2; (B) "a small hole is made in the casting between the flush channel and the air inlet and its channel", as called for by claim 2; (C) "the fan is positioned below the right side of the tank with its inlet centered between the floor and tank", as called for by claim 3; and (D) "an exhaust flange", as called for by claim 3. Correction is required.

12. The following informalities in the claims are noted: (A) in claim 1, on line 3, "bowls" should read --bowl's--, "an" should read --a--, and --in the tank-- should be inserted after "level"; (B) in claim 1, on line 4, "whereas" should read --wherein--; (C) in claim 2, on line 2, "An" should read --The-- and "where" should read --wherein--; (D) in claim 3, on line 2, "the" should read --a--; (E) in claim 4, on line 2, "A valve" should read --The improvement to a toilet ventilation vacuum fan--, and a comma should be inserted directly after "3"; (F) in claim 4, on line 2, "that would be" should be changed to read --wherein a valve is--; (G) in claim 4, on line 2, "into a fan venting a toilet into" should read --in--; (H) in claim 5, on line 2, "A valve" should read --The improvement to a toilet ventilation vacuum fan--, and a comma should be inserted directly after "4"; (I) in claim 5, on line 2, "in a wall mounted . . . to the toilets stack" should be deleted; (J) in claim 6, on line 2, "A fan" should read --The improvement to a toilet ventilation vacuum fan--, and a comma should be inserted directly after "3"; (K) in claim 6, on line 2, "that would be . . . into the stack" should be deleted; (L) in claim 7, on line 2, "An adaptation . . . could have a cover as in" should be changed to read --The improvement to a toilet ventilation vacuum fan in accordance with--, and a comma should be inserted directly after "6"; (M) in

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claim 7, on line 3, --the fan has a fan disc and-- should be inserted after "wherein"; (N) in claim 7, on line 4, --the-- should be inserted before "fan"; (O) claims 7 and 9-11, on the last line thereof, a period should be inserted at the end; (P) in claim 8, on line 2, "A method . . . fan as in" should be changed to read --The improvement to a toilet ventilation vacuum fan in accordance with--, and a comma should be inserted directly after "6"; (Q) in claim 8, on line 2, "in a rectangle . . . wallboard" should be changed to read --wherein the fan is mounted in a rectangular hole cut in a wall--; (R) in claim 8, on line 3, "the" (third occurrence) should read --its--, and --has-- should be inserted after "and"; (S) in claims 9 and 10, on line 2, "In" should be changed to read --The improvement to a toilet ventilation vacuum fan in--, and a comma should be inserted directly after "8"; (T) in claims 9 and 10, on line 2, "the cam knob is modified" should be deleted; (U) in claim 9, on line 3, --knob-- should be inserted after "cam"; (V) in claim 9, on line 4, --knobs-- should be inserted after "cam", "presses" should be changed to read --pressing--, "the free" should be changed to read --a free--, and --material-- should be inserted after "spring"; (W) in claim 10, on line 3, --knobs such that-- should be inserted after "cam"; (X) in claim 10, on line 4, "whereas" should be deleted, --knob-- should be inserted after "cam", and "board" should be deleted; (Y) in claims 11 and 12, on line 2, "In" should be changed to read --The improvement to a toilet ventilation vacuum fan in--, a comma should be inserted directly after "3", --further comprising-- should be inserted before "a fan", and "that would . . . stack" should be deleted; (Z) in claim 11, on line 3, "points up . . . attaching itself" should be changed to read --is attached--, "vent" should be deleted, and a period should be inserted after "flange"; (AA) in claim 11, line 4 should be deleted in its entirety; (BB) in claim 12, on line 3, "would be" should be changed to read --is--, a period should be inserted after "flexible", and "when connected . . . the vent stack" should be deleted; and (CC) in claim 12, line 4 should be deleted in its entirety.

### *Claim Rejections - 35 USC § 112*

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.



14. Claims 3-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. Claim 3 contains a term lacking proper antecedent basis. The claim recites the limitation "the toilets stack" in line 4. There is insufficient antecedent basis for this limitation in the claim.

16. Claim 4 contains terms lacking proper antecedent basis. The claim recites the limitations "the fan blade" in line 3, and "the wall" in line 4. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sowards. Sowards discloses an improvement to ventilating toilets that extract air from the bowl 14 via an independent air inlet (note from line 62 in col. 1 to line 3 in col. 2) having all the claimed features including the bowl's air being channeled up into the tank 16 via a tube (constituted by the overflow pipe or tube 28) that opens above the water level 30 in the tank 16 wherein an air vacuum in the tank 16 can extract the air at the same time water is flushing in the tube 28 (note lines 3-18 in col. 2).

19. Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Poister et al. Poister et al. disclose an improvement to a toilet ventilation vacuum fan having all the claimed features including the fan (constituted by blower 44) being positioned below the right side of the toilet tank (note Figs. 1 and 5) with its inlet centered between the floor and the toilet tank wherein the fan 44 can be connected to a flange from the bottom of the toilet tank to a toilet

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venting stack 41 (note Fig. 1). With respect to claim 4, Poister et al. also disclose that the fan 44 has a valve 82 pivotally hinged close to the fan (note Fig. 1) to seal or entirely block the flow path (note from line 66 in col. 3 to line 5 in col. 4).

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sowards in view of Fernald, Sr. Although Sowards fails to disclose the structure forming the air inlet in the toilet bowl, attention is directed to Fernald, Sr., who discloses another ventilating toilet that extracts air from the bowl wherein the holes or openings 76 formed in the rim of the bowl serve a dual function as air inlets (note lines 53-63 in col. 3) and flushing outlets such that the flushing operation keeps the bowl generally clean (note lines 20-23 in col. 3). It would have been obvious to one of ordinary skill in the toilet ventilating art, at the time the invention was made, to form the rim of the bowl of Sowards with a plurality of holes or openings in view of the teachings of Fernald, Sr. in order to keep the bowl generally clean.

22. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poister et al. in view of Cour. Poister et al. further disclose that the valve 82 is a solid flap hinged on one end (note Fig. 3). Although Poister et al. fail to disclose that the valve flap has rubber around its edge, attention is directed to Cour who discloses another ventilating system having flap valves wherein each valve flap carries a rubber seal 104 which extends around the four sides of the flap valve (note ¶s 0051 and 0038) in order to effect sealing between the flap valve and its valve seat. It would have been obvious to one of ordinary skill in the ventilating art, at the time the invention was made, to form the flap valve of Poister et al. with a rubber seal which extends around the

four sides of the flap valve in view of the teachings of Cour in order to effect a good sealing between the flap valve and its valve seat.

23. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poister et al. in view of Bakkeren (EP 0 705 982 A2). Poister et al. further disclose that the fan 44 is removably housed in the compartment 66 (note lines 48-52 in col. 3). Although Poister et al. fail to disclose how the fan 44 is removably mounted, attention is directed to Bakkeren who discloses another ventilating fan wherein the fan has a removable cover 22 mounted to the fan housing 3 by a turn lock feature (constituted by the bayonet fitting 54, note Fig. 9) in order that the cover 22 can be removably coupled without use of a tool (note lines 34-47 in col. 2). It would have been obvious to one of ordinary skill in the ventilating art, at the time the invention was made, to provide the fan 44 of Poister et al. with a removable cover that has a turn lock feature or bayonet fitting in view of the teachings of Bakkeren in order to provide a cover which can be removably coupled without use of a tool. With respect to claim 7, Bakkeren further teaches the obviousness of forming the fan disc or rotor 6 with a large hub (note Fig. 1). With respect to claim 8, Bakkeren also teaches the obviousness of forming the fan with a beveled surface (constituted by edge 23 (note Fig. 2)) along the front or top of the housing and has two cams (constituted by the protrusions or protruding portions on the cover 22 that coact with the bayonet slots 54 (note Fig. 9)). With regard to claim 9, the bayonet connection as taught by Bakkeren inherently define spring-like material portions under the cam portions. With regard to claim 10, Bakkeren further teaches the obviousness of using angled pieces (constituted by fastening elements 31) riveting the housing with the wall.

24. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poister et al. in view of Buchanan. Poister et al. disclose the use of conduit 67 to attach the fan to the stack. Although Poister et al. fail to disclose the use of an exhaust hose that is angled upwardly toward the stack and connects to the fan via an angled flange, attention is directed to Buchanan who discloses another ventilating toilet wherein a flexible hose or ducting 22 is angled upwardly toward the stack and connects to the fan housing via an angled flange (note Fig. 2). It would

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have been obvious to one of ordinary skill in the toilet ventilating art, at the time the invention was made, to use a flexible hose or ducting that is angled upwardly toward the stack and connects to the fan housing via an angled flange on the fan housing of Poister et al. in view of the teachings of Buchanan in order to allow for flexibility in mounting the fan so that is positioned well above the toilet and its plumbing connections so that is easier to service.

25. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poister et al. in view of Hugo Ceja Estrada. Poister et al. disclose the use of conduit 67 to attach the fan to the stack. Although Poister et al. fail to disclose the use of an exhaust hose, attention is directed to Hugo Ceja Estrada who discloses another ventilating toilet wherein a flexible exhaust hose 20 or 39 is used to connect the fan to the stack in order to provide flexibility which allows for the ability to replace the fan motor and the hoses with greater ease and also allows for the installation of a larger or smaller size fan motor depending upon what is desired (note lines 42-49 in col. 3). It would have been obvious to one of ordinary skill in the toilet ventilating art, at the time the invention was made, to use flexible hoses to attach the fan to the stack of Poister et al. in view of the teachings of Hugo Ceja Estrada in order to provide flexibility which allows for the ability to replace the fan motor and the hoses with greater ease and also allows for the installation of a larger or smaller size fan motor depending upon what is desired.

### *Conclusion*

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

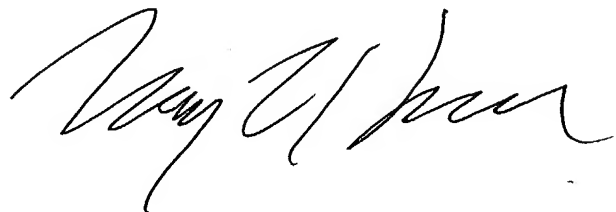
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28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

July 7, 2004



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